EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

84-1418

Office - Supreme Court, U.S.
FILED
OCT 17 1985
ALEXANDER L. STEVAS.
CLERK

NO. A-289

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

IRMA PASTRANA DE CARABALLO,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RAFAEL CARRERAS-VALLE, Esq.
COUNSEL FOR PETITIONER
P.O. BOX 20399
RIO PIEDRAS, P.R. 00928
PHONE (809) 767-5665

December 28, 1984.

27pp

QUESTION PRESENTED

1. Did the Court below err when it violate the due process of law to Petitioner denying her opportunity to review decision she is entitled to in the same manner as other civil action?

2. Did the Court below err by holding that the Secretary denial of Petitioner's constitution of Social Security Disability Insurance Benefits was supported by substantial evidence?

TABLE OF CONTENTS

PAGES

QUESTION PRESENTED 2

OPINION BELOW 2

JURISDICTION 3

CONSTITUTIONAL, STATUTORY AND REGULATIONS INVOLVED 4-5

STATEMENT OF THE CASE 6-8

REASONS FOR GRANTING THE WRIT OF CERTIORARI 8

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEALS AS TO THE PROPER INTERPRETATION OF TITLE 42 U.S.C.A. SECTION 405(g).. 8

2. DID THE COURT BELOW ERR BY HOLDING THAT THE SECRETARY DENIAL OF PETITIONER'S CONTINUATION OF SOCIAL SECURITY DISABILITY BENEFITS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE 11

CONCLUSION 15

CERTIFICATE OF SERVICE 16

APPENDICES ..... A-1 to A-3

PAGES

APPENDICES

A. Opinion of the Court Below dated July 24, 1984 ..... A-1

B. Petition for Rehearing denied dated August 15,1984 ..... A-2

C. Order from U.S. District Court for the District of P.R. dated February 3,1984.. A-3

TABLE OF AUTHORITIES

CASES	PAGE
Allen v Califano,(C.A.6,1980), 613 F.2d. 139	12
Crosby v Schweiker,(5th.Cir.,1981), 650 F.2d. 777, 778	11
Hephner v Mathews,(6th.Cir.,1978), 574 F.2d. 259	9
Janka v Secretary of H.E.W. (C.A.8, 1978),589 F.2d. 365	12
Lewis v Weinberger,(4th.Cir.,1975), 515 F.2d. 584, 587	9
Lewis v Weinberger,(4th.Cir.,1976), 541 F.2d. 417, 420	9
Mathews v Eldridge,424 U.S.319, 332, (1976)	10
Morgan v United States, 289 U.S. 468, (1936)	10
Rivas v Weinberger,(5th.Cir.,1973), 475 F.2d. 255, 256	11
S.E.C. v Chenery Corp. 318 U.S. 80, 94; 63 S.Ct. 454, 462- 87 L.Ed.626..	10
Simpson v Schweiker,(11th.Cir.1983) 691 F.2d. 966, 969	11

CONSTITUTION OF THE UNITED STATES

	PAGES
Fifth Amendment	4,10
Fourteent Amendment	4,10

S T A T U T E S

28 U.S.C.A. Section 1254(1)	3
42 U.S.C.A. Section 405(b)	9
405(g)	3,5,9
416(i)	11
423(d)(1)(A)	5

R E G U L A T I O N S

Section of the Secretary's Regulations (20 C.F.R.)

Section 404.1505 et.seq.(1983)..... 6

M I S C E L L A N E O U S

Public Law 98-460,(1984); (Social Security Disability-Reform Act of 1984) 12-15

NO. A-289

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

IRMA PASTRANA DE CARABALLO,

Petitioner,

Vs.

SECRETARY OF HEALTH AND HUMAN SERVICES

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Petitioner, IRMA PASTRANA DE CARABALLO, respectfully prays to this Honorable Court that a Writ of Certiorari issue to review the ORDER of the United States Court of Appeals for the First Circuit entered in this case on July 24, 1984. The petition for rehearing is denied on August 15, 1984.

OPINION BELOW

The ORDER of the Court of Appeals, not for publication appears in the Appendix hereto. No opinion was rendered. (A-1). On August 15, 1984 the petition for rehearing was denied. (A-2). On February 03, 1984 the District Court for the District of Puerto Rico rendered an Opinion and Order affirming the Secretary's decision denying Petitioner's continuation of her Disability Insurance Benefits. (A-3).

JURISDICTION

The ORDER of the Court of Appeals for the First Circuit was entered on July 24, 1984. (A-1). A timely petition for rehearing was denied on August 15, 1984. An application for an extension of time was granted by Hon. William J. Brennan, Jr. this Court, to include January 01, 1985. (A-15). This Court's jurisdiction is invoked under 28 U.S.C.A. Section 1254(1); and 42 U.S.C.A. Section 405(g).

CONSTITUTIONAL, STATUTORY and REGULATIONS PROVISIONS INVOLVED

The Constitutional, Statutory and Regulations provisions which are relevant to decision of this case, are Amendments V and XIV of the United States Constitution; Amendment V, provides in part:

"No person shall... be deprived of life, liberty or property, without due process of law...."

And Amendment XIV Section provides in Part:

".... Nor deny to any person within its juridiction the equal protection of the laws....."

Judicial review of cases arising under title II of the Social Security Act, as amended, is provided for in sections 205(g) of the Act, 42 U.S.C.A. Section 405(g) in pertinent part provides:

(g) ..... The judgment of the Court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions....."

Section 223(d)(1)(A) of the Social Security Act, 42 U.S.C.A. Section 423(d)(1)(A), provides in part:

(d)(1) The term "disability" means-

"(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or ..."

Congress authorizes the promulgation of regulations to the Secretary of Health and Human Services, who in-turn delegates the authority to the Social Security Administration. The S.S.A. promulgates regulations as part IV and published in the Federal Register under 20 C.F.R. Sections 404. et. seq.

STATEMENT OF THE CASE

This Petitioner seeks to review the ORDER of the Court of Appeals for the First Circuit affirming the judgment.

Petitioner was entitled to Social Security Disability Insurance Benefits since April 24, 1969 due to a mental disorders and on a later date developed pain in the neck, low back syndrome and radiculopathy L5, bilaterally.

On April 26, 1982 the Secretary sent a letter to Petitioner informing her that her disability under the Social Security Act, as amended, Section 404.1505, et. seq. of the Secretary's Regulations (20 C.F.R. Section 404.1505, et. seq.-(1983), were ceased in March 1982 and her entitlement to disability benefits were terminated two months later, as of June, 1982.

On December 9, 1982 a hearing was held before an Administrative Law Judge. She testified about her pain and that she was hospitalized several times at the Hato Rey, Psychiatric Hospital, Hato Rey, Puerto Rico. Her treating Physician, Dr. de Thomas, was her treating physician at the hospital. He submitted several reports.

Petitioner's husband testified and corroborated her wife's testimony. He has to do all the household chores.

During the hearing no vocational expert nor a medical advisor testified.

After the hearing, on February 9, 1982 the Administrative Law Judge sent the Petitioner for a consultative psychiatric evaluation by Dr. Leopoldo L. Pérez, Psychiatrist, who found her a normal person even though his diagnostic impression was:

"Depressive Neurosis" No severity shown.

The Disability Determination Program, State Agency, sent specific questions to Dr. Pérez his psychiatric evaluation.

On February 10, 1982 Petitioner was sent for a consultative Neurological Evaluation by dr. Angel L. González-Cotto, Neurologist, who found her a normal person, even though he found a psychiatric condition.

On February 22, 1983 the Administrative Law Judge issued a Notice of Decision-Denial.

On June 01, 1983 the Appeals Council sustained the Administrative Law Judge's denial decision. Thus, her disability benefits were terminated as of June, 1982.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEALS AS TO THE PROPER INTERPRETATION OF TITLE 42 U.S.C.A. SECTION 405(g).

Section 405(g) of title 28 provides that a Federal Court shall have jurisdiction of a final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action.... The Judgment of the Court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions.

The United States Court of Appeals for the First Circuit rendered a decision in conflict with the decisions of the Court of Appeals in the cases of Hephner v Mathews, (6th.Cir.,1978), 574 F.2d.259; Lewis v Weinberger, (5th.Cir.,1975), 515 F.2d. 584, 587; Lewis v Weinberger, (4th.Cir.,1976),541 F.2d. 417-420, and 42 U.S.C.A. Section 405(b), in pertinent part provides:

"(b) The Secretary is directed to make findings of fact and decision....."

This Honorable Court should consider whether the due process requirements of a full and fair review was violated in this case as protected by the Fifth and Fourteenth Amendment of the Constitution of the United States. Morgan v Unites States 289, U.S. 468 (1936).

"It is well settle that Disability Insurance Benefits are subject to procedural due process protections." Mathews v Eldridge, 424 U.S. 319, 332, (1976).

The case of S.E.C. v Chenery Corp. 318 U.S. 80, 94; 63 S.Ct. 454, 462, 87-L.Ed. 626 the Court states:

"Courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review... The orderly functioning of the process of review requires that the grounds upon which the Administrative Agency acted by clearly disclosed and adequately sustained."

It is the contention of the

Petitioner that she was denied a full and fair review of her disability case by the Courts below.

2. DID THE COURTS BELOW ERR BY HOLDING THAT THE SECRETARY DENIAL OF PETITIONER'S CONTINUATION OF SOCIAL SECURITY DISABILITY INSURANCE BENEFITS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Court below err when upon review considered only the consultative evaluations of two physicians visa, vis, her treating physician for more than twenty (20) years.

"Once disability and a period of disability has been established under the provisions of 42 U.S.C.A. Section 416(i) and 423(d), there is a presumption that this condition continues to exists until the contrary is shown."

Rivas v Weinberger (5th.Cir.,1973),475 F.2d. 255, 256;
Simpson v Schweiker,(11th.Cir.,1983), 691 F.2d. 966, 969.

"If the evidence is a continuation case is substantially the same as the evidence had been in the initial disability benefits request case, benefits must be continued." Crosby v Schweiker, (5th.Cir.,1981),650 F.2d. 777, 778.

Mrs. Caraballo was entitled to disability benefits due to her severe mental condition since the year 1969; which at present still she is under treatments with the same psychiatrist, Dr. Antonio de Thomas, who diagnosed:

"Schizophrenia Catatonic Type with Frequent Episodes and Depression."

"It is well settled that conflicts in evidence are to be resolved by the Secretary as trier of fact. But the Secretary must explain why he accorded some evidence great weight and other evidence very little."

Janka v Secrv. of H.E.W.(C.A.8,1978),589 F.2d. 365.

"Treating Physicians reports are to be given great probative weight especially if supported by objective findings."

Allen v Califano,(C.A.6,1980),613 F.2d.139.

The Courts below only gave credit to consultative evaluations perform by physicians without any reasons.

On October 9, 1984, President Reagan, signed into law the Social Security Disability Benefits Reform Act of 1984, Public

Law No. 98-460. The Act, among other things provides new standards for determining whether disability benefits should be terminated. Section 2(a),(b),(c). In essence, the Act provides that, while there is no presumption of continuing disability, medical improvement will be considered in termination cases. In addition, the Act provides that Courts "shall remand" to the Secretary "all actions relating to medical improvement [1] pending on September 19, 1984. Section 2(a)(2)(C). The Act further provides for optional interim benefits for those persons whose cases are remanded. Section 2(e).

1/ The Act defines the term "action relating to medical improvement" as follows:

> For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under Title II, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such

This is an action for judicial review of a termination of disability benefits that was pending on September 19, 1984. Under the legislation, the action must be remanded to the Secretary if it is an "Action relating to medical improvement" within the meaning of the Act. Since it is clear from the papers filed in this case that "medical improvement" is an issue, this action must be remanded to the Secretary so that the new standard may be applied to Petitioner, SS No. 582-60-1469.

Therefore; according to above new law; all cases pending before the Courts be remanded to the Secretary for further proceedings.

1/ entitlement is based) since the time of a prior determination that the individual was under a disability. Section 2(d)(6)

C O N C L U S I O N

For the reasons aforesaid, it is respectfully prays that the Writ of Certiorari be granted pursuant to the Social Security Disability Benefits Reform Act of 1984.

Respectfully Submitted,

RAFAEL CARRERAS-VALLE
COUNSEL FOR PETITIONER
P. O. BOX 20399
RIO PIEDRAS, P.R. 00928

PHONE (809) 767-5665

December 28, 1984.

A P P E N D I X

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO. 84-1279

IRMA PASTRANA DE CARABALLO
Plaintiff, Appellant,

V.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant, Appellee.

Before

Coffin, Bownes and Breyer,
Circuit Judges

ORDER OF COURT

Entered July 24, 1984

The psychiatric evaluation of Dr. Perez and the medical report of Dr. González Cotto provide substantial evidence supporting the Secretary's decision to terminate disability benefits. The Judgment of the district Court affirming the decision of the Secretary is affirmed.

By the Court:

(s)(t) Francis P. Scigliano
Clerk.

(cc: Messrs. Carreras Valle and U.S. Atty.)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 84-1279

IRMA PASTRANA DE CARABALLO,
Plaintiff, Appellant,

V.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant, Appellee.

ORDER OF COURT

Entered August 15, 1984

The petition for rehearing is denied.

By the Court,

(s)(t.) Francis P. Scigliano
Clerk.

(cc: Messrs. Carreras Vallejo and J.S. Atty.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IRMA PASTRANA DE CARABALLO Plaintiff	*	CIVIL NO.
Vs.	*	83-1683(JP)
SECRETARY OF HEALTH AND HUMAN SERVICES Defendant	*	

O R D E R

The above captioned case comes before this Court for review of a final decision of the Secretary of Health and Human Services (the Secretary), pursuant to 42 U.S.C. Section 405(g), upon a denial of Plaintiff's claim for a period of disability and disability insurance benefits.

The scope of judicial review by this Court provides that the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. Richardson v Perales, 402 U.S. 389 (1971). The Court has carefully reviewed the

transcript and the memorandum of law submitted by both parties to this action and hereby finds that the Secretary's decision regarding the plaintiff is substantially supported by the evidence as mandated in 42 U.S.C. 405(g). Therefore, the decision of the Secretary is hereby AFFIRMED.

IT IS SO ORDERED.

The Clerk shall act accordingly.

In San Juan, Puerto Rico, this 3 day of February, 1984.

(s.) JAIME PIERAS, JR.

(t.) JAIME PIERAS, JR.
U.S. DISTRICT JUDGE